

1979 S.C. Op. Atty. Gen. 40 (S.C.A.G.), 1979 S.C. Op. Atty. Gen. No. 79-28, 1979 WL 29034

Office of the Attorney General

State of South Carolina

Opinion No. 79-28

February 14, 1979

**\*1 SUBJECT: State Employees—Assigned Automobiles—Reimbursement for Personal Use**

(1) Personal use of State-owned vehicles is to be charged under the provisions of Section 133 of Act 644, Acts of 1978, at the prevailing local value.

(2) The value of the personal use of a State-owned vehicle constitutes income to the employee, however, if paid for the amount paid is deductible.

TO: Mr. James R. Brown, Director  
Research and Administration  
The Senate of South Carolina

QUESTION:

Is a person with an assigned State vehicle required to reimburse the State for personal use of the vehicle and is the value of such use income to the employee for tax purposes?

APPLICABLE LAW:

Section 133, Act 644, Acts of 1978.

DISCUSSION:

Section 133 of Act 644, Acts of 1978, provides in part as follows:

‘That salaries paid to officers and employees of the State, including its several boards, commissions, and institutions shall be in full for all services rendered, and no perquisites of office or of employment shall be allowed in addition thereto, but such perquisites, commodities, services or other benefits shall be charged for at the prevailing local value and without the purpose or effect of increasing the compensation of said officer or employee;’

A perquisite is defined in Webster’s New Collegiate Dictionary to mean:

‘A privilege, gain, or profit incidental to regular salary or wages; one expected or promised; gratuity, tip; something held or claimed as an exclusive right or possession.’

It has been judicially defined as:

‘\* \* \* a privilege, gain or profit incidental to employment in addition to regular salary or wages.’ [Louisiana State Civil Service Comm. v. Louisiana Dept. of Corrections](#), 251 So.2d 524. See also 32 Words and Phrases, Perquisites.

The General Assembly, however, has further provided in the section that:

‘\* \* \* such perquisites, commodities, services or other benefits shall be charged at the prevailing local value \* \* \*.’

The legislative intent is for broad inclusion within the phrase. The personal use of a State-owned vehicle would fall within this terminology and by the requirements of the section are to be charged at the prevailing local value.

It should be noted that the amount of the ‘prevailing local value’ for the use of the State-owned vehicle constitutes gross income to the employee. For income tax purposes gross income is defined in part by [Section 12-7-510 of the 1976 South Carolina Code of Laws](#) to mean:

‘\* \* \* the income of a taxpayer derived from salaries, wages or compensation for personal service, of whatever kind or in whatever form paid \* \* \*.’

Our court has held the term is to be taken in its ordinary sense of gain or profit. [Beard v. South Carolina Tax Commission](#), 230 S. C. 357, 95 S. E. 2d 377, cert. denied, 355 U. S. 913, 78 S. Ct. 342, 2 L.Ed.2d 274.

The United States Fourth Circuit Court of Appeals held in the case of [C.I.R. v. Mendel](#), 351 F.2d 580, that the term means:

\*2 ‘\* \* \* any economic or financial benefit conferred on an employee as compensation is gross income \* \* \*.’

The value of the use is therefore gross income to the employee; however, any payment to the State to compensate for the use is deductible.

It should also be noted that the term ‘personal use’ is not defined by Section 133 of the Act. It would be necessary therefore for the Division of Motor Vehicle Management and the Motor Vehicle Management Council to define the term. The Division and Council are created by Section 24 of Part II of the Act which section must be considered when defining the term ‘personal use’.

#### CONCLUSION:

(1) Personal use of State-owned vehicles is to be charged under the provisions of Section 133 of Act 644, Acts of 1978, at the prevailing local value.

(2) The value of the personal use of a State-owned vehicle constitutes income to the employee, however, if paid for the amount paid is deductible.

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